

HOUSE No. 894

By Mr. Jones of North Reading, petition of Bradley H. Jones, Jr., and others for legislation to authorize the Division of Victim Compensation and Assistance to monitor profits from criminal activities of incarcerated persons. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

Bradley H. Jones, Jr.	Robert S. Hargraves
Mary S. Rogeness	Daniel K. Webster
George N. Peterson, Jr.	Lewis G. Evangelidis
John A. Lepper	Karyn E. Polito
Viriato Manuel deMacedo	Paul J.P. Loscocco
Elizabeth A. Poirier	Shirley Gomes
Jeffrey Davis Perry	Michael J. Coppola
Donald F. Humason, Jr.	Todd M. Smola
Susan W. Pope	Richard J. Ross
Susan Williams Gifford	

In the Year Two Thousand and Five.

AN ACT RELATIVE TO PROFITS FROM CRIME.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws, as appearing in the 2002 Offi-
2 cial Edition, are hereby amended by inserting after chapter 258C
3 the following new chapter:—

4 **CHAPTER 258D**

5 Section 1. (a) The following words as used in this section
6 shall have the following meanings, unless the context otherwise
7 requires:

8 “Contracting party”, any person, firm, corporation, partner-
9 ship, association or other private legal entity which contracts for,

10 pays, or agrees to pay a defendant consideration which it knows or
11 reasonably should know may constitute proceeds from a crime.

12 “Conviction”, a finding or verdict guilty or of not guilty by
13 reason of insanity, a plea of guilty or a finding of sufficient facts
14 to warrant a finding of guilty whether or not final judgment or
15 sentence is imposed, or an adjudication of delinquency or of youth”

16 “Crime”, any violation of Massachusetts law that is punishable
17 by imprisonment in state prison and any federal offense com-
18 mitted in the commonwealth that is punishable by death or impris-
19 onment for a term of more than one year. Crime shall also include
20 any offense committed by a juvenile which would be a crime if
21 the juvenile were an adult.

22 “Defendant”, a person who has been charged with or convicted
23 of a crime, or has voluntarily admitted the commission of a crime.

24 “Division”, the division of victim compensation and assistance
25 within the department of the attorney general.

26 “Proceeds of the crime”, any assets, material objects, monies,
27 and property obtained through the use of unique knowledge or
28 notoriety acquired by means and in consequence of the commis-
29 sion of a crime from whatever source received by or owing to a
30 defendant or his representative, whether earned, accrued, or paid
31 before or after the disposition of criminal charges against the
32 defendant.

33 “Victim”, any natural person who suffers direct or threatened
34 physical, emotional, or financial harm as the result of the commis-
35 sion of a crime, or the estate, legal guardian, and other family
36 members of such person if the person is a minor, incompetent or
37 deceased.

38 (b) Any contracting party which contracts for, pays or agrees
39 to pay a defendant or his representative consideration which it
40 knows or reasonably should know may constitute proceeds of a
41 crime shall, within 30 days of the agreement, submit to the divi-
42 sion a copy of its contract or a summary of the terms of any oral
43 agreement.

44 (c) Until such time as the division makes its determinations
45 under subsection (g), the contracting party shall file a bond, exe-
46 cuted by the contracting party and by a surety company authorized
47 to do business within the commonwealth, with the division equal
48 in amount to any proceeds of the crime which by the terms of the

49 contract would otherwise be owing to a defendant or his represen-
50 tative. Said bond shall be payable to the commonwealth, for the
51 benefit of any victim aggrieved by the activity of the defendant or
52 contracting party.

53 (d) If the provisions of subsections (b) or (c) are violated, the
54 division may petition the superior court for an order of enforce-
55 ment. Such action shall be brought in the county in which the
56 contracting party resides or has his principle place of business, or
57 in Suffolk county if the contracting party does not reside or have a
58 principal place of business in the commonwealth. Upon a finding
59 that a contracting party has violated either subsections (b) or (c)
60 the court shall, in addition to any other relief, impose on the con-
61 tracting party a civil penalty of the value of the contract or agree-
62 ment. If the court finds such violation to have been knowing or
63 willful, it shall impose a civil penalty up to three, but not less than
64 two, times the value of the contract or agreement. To the extent
65 monies or other consideration received by the division as a result
66 of such order exceed the value of the contract or agreement, they
67 shall be deposited into the victim compensation fund maintained
68 by the treasurer in accordance with section 4(c). Any remaining
69 monies or consideration shall be held by the division pending the
70 determinations required by subsection (g).

71 (e) The division, upon receipt of a contract or other agreement
72 to pay a defendant, shall take reasonable steps to notify all known
73 victims of the crime about the existence of a contract or agree-
74 ment. Notifications shall be made by certified mail to the victim's
75 last known address. The division shall also provide legal notice in
76 a newspaper of general circulation in the county in which the
77 crime was committed to publicize the existence of proceeds
78 related to the crime. Such notice shall be made by the division
79 once every six months for one year from the date of receipt of the
80 contract or agreement. The division may provide for such addi-
81 tional notice as it deems necessary. Failure to notify victim shall
82 not result in liability beyond the amount of any consideration in
83 escrow at the time any judgment arising out of such liability is
84 executed upon.

85 (f) Notwithstanding any other provision of the General Laws
86 with respect to the timely bringing of an action, any victim shall
87 have the right to bring a civil action to recover money damages

88 from a defendant or his legal representative within three years of
89 the last mandatory published public notice provided for in subsection (e).

91 (g) Within 30 days from the receipt of a contract or agreement,
92 or upon its own initiative if no contract or agreement is submitted,
93 the division shall determine whether the terms of the contract or
94 agreement include proceeds as defined in subsection (a), and, if
95 so, whether such proceeds arise from activity that is substantially
96 related to a crime. An activity is substantially related to a crime if
97 it principally derives from the unique knowledge or notoriety
98 acquired by means and in consequence of the commission of a
99 crime for which the defendant has been charged or convicted, or
100 which the defendant has voluntarily admitted. Activity that is tangentially related to a crime, or that contains only a passing reference to a crime, shall not be determined to be substantially related.

104 (h) In order to make the determinations required by subsection (g) the division shall be authorized to issue written civil investigative demands which may be served by certified mail, and which shall be returned within 15 days from the date of service. Whenever a person fails to comply with a civil investigative demand served on him pursuant to this section, the division may petition the superior court for an order of enforcement. Such action shall be brought in the county in which the party resides or has his principal place of business, or in Suffolk county if the party does not reside or have a principal place of business in the commonwealth. Failure to comply with an order entered under this section shall be punished as a contempt of court. All information collected by the division pursuant to this section shall be kept in accordance with the provisions of chapters 4, 66, and 66A.

118 (i) Upon making the determinations required by subsection (g), the division may continue to hold the bond filed in accordance with subsection (c), or may require the contracting party to file a new bond equal to the amount determined by the division to constitute proceeds arising from activity that is substantially related to a crime. The bond held by the division shall be used to satisfy, in part or in full, any civil judgment obtained by a victim against the defendant arising from the crime.

126 (j) Within 15 days of the determination required by subsec-
127 tion (g), the division shall notify the contracting party of its deter-
128 minations by certified mail.

129 (k) Within 15 days of the date of mailing of the notice of the
130 division's determination, a contracting party aggrieved by the
131 division's determination may appeal to the attorney general, by
132 serving on the attorney general a written notice to that effect.
133 Thereupon the attorney general shall immediately cause the divi-
134 sion or his designee to hold a public hearing on the division's
135 action appealed from. The division shall notify the contracting
136 party by certified mail of the determination upon appeal within 10
137 days of the closing of the hearing. Such notice shall include infor-
138 mation regarding the contracting party's right to a petition for
139 judicial review of the determination of the division.

140 (l) Within 30 days of the date of mailing of the notice of the
141 division's determination, the contracting party may file a com-
142 plaint for judicial review in the superior court in the county in
143 which the contracting party resides or has his principle place of
144 business, or in Suffolk County if the contracting party does not
145 reside or have a principal place of business in the commonwealth.
146 Proceedings upon any such complaint shall be in accordance with
147 chapter 30A. If no petition is filed within the time specified, the
148 decision of the division shall be final.

149 (m) The bond required in subsections (c) and (i) shall not be
150 used to satisfy any civil judgment for a victim until the defendant
151 has been fully and finally convicted of the crime for which he has
152 been charged or until the defendant has voluntarily admitted the
153 commission of the crime.

154 (n) The division shall return to the contracting party the bond
155 required in subsections (c) and (i) if the defendant is fully and
156 finally prosecuted and is not convicted of the crime, or has not
157 voluntarily admitted the commission of the crime.

158 (o) After all civil claims instituted by victims against the defen-
159 dant have been satisfied, or if no claims have been filed after three
160 years after the last mandatory published public notice provided for
161 in subsection (e), one half of the value of the bond required in
162 subsections (c) and (i) shall be returned to the contracting party.
163 The remaining portion of the bond shall be deposited into the
164 victim compensation fund maintained by the department of the
165 attorney general in accordance with section 4C of chapter 258C.

166 (p) The division, acting on behalf of any victim, shall have the
167 right to apply for any and all provisional remedies, available
168 under civil practice law and rules, including, but not limited to,
169 attachment, injunction, receivership and notice of pendency.
170 (q) Any action taken by a defendant, or his representative,
171 whether by way of execution of a power of attorney, creation of
172 corporate entities or otherwise, to defeat the purpose of this
173 section shall be null and void.

1 SECTION 2. Section 2A of chapter 260 of the General Laws,
2 as so appearing, is hereby amended by inserting after the first sen-
3 tence the following sentence:— Actions for torts against a crim-
4 inal defendant by the victim as defined by section 1 of
5 chapter 258D shall be tolled during any period of incarceration,
6 parole or probation of the defendant for the crime committed
7 against the victim.